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SUBJECT: UKRAINE: UNODC Nuclear Legislation Workshop - A Model for Future Efforts

¶1. The Department of Justice (DOJ) and the Department's Nuclear Smuggling Outreach Initiative (NSOI) office worked with the UN Office of Drugs and Crime (UNODC) to hold a "Legislative Drafting Expert Workshop on the Criminal Law Aspects of the Universal Legal Framework Against Nuclear Terrorism" in Kyiv March 11-13. The workshop aimed to strengthen Ukrainian legislation and international legal cooperation against nuclear terrorism. (Note: NSOI is an interagency effort, coordinated by ISN/CTR and reporting to the Proliferation Strategy Sub-PCC, to enhance international assistance to combat smuggling of nuclear and radioactive materials. The initiative focuses on countries identified by the U.S. intelligence community as being of greatest concern regarding the possibility of nuclear smuggling attempts taking place.)

¶2. NSOI's interest resulted from a joint NSOI and Ukrainian government determination that one of the priority steps that should be taken to improve Ukraine's anti-nuclear smuggling capabilities would be to ensure that Ukrainian laws are sufficient to enable the GOU to prosecute all possible cases of nuclear smuggling. To this end, NSOI and the Ukrainian government agreed to seek the assistance of legal experts to review Ukrainian laws and, if they were deemed insufficient, to advise on appropriate revisions. NSOI wanted to ensure that Ukraine had the requisite laws necessary to adequately prosecute all scam scenarios involving nuclear and radioactive materials, since effective prosecution of criminals involved in illicit trafficking is vital to deter what is primarily an opportunistic, profit-driven crime. Scams constitute a significant portion of cases of illicit trafficking in Ukraine and waste the valuable time of law enforcement and intelligence personnel in addition to exposing vulnerabilities that could be exploited by smugglers trafficking in more dangerous materials. Likewise, these cases perpetuate the belief that smuggling nuclear and radioactive materials can be very profitable and may encourage additional thefts of these materials.

¶3. We put NSOI in contact with the Ukrainian NGO, International Antiterrorism Unity, to identify a Ukrainian legal expert to carry out this analysis within the framework of the workshop. The Embassy Resident Legal Advisor's office also provided translation of Ukrainian legislation, vetted the candidate expert, and assisted in contacting him. The expert, Dr. Volodymyr Halahan, prepared a 30-page analysis of the adequacy of Ukrainian legislation with respect to prosecution of nuclear smuggling scams. DOJ Counterterrorism section trial attorney David Cora presented the U.S. experience in prosecuting nuclear smuggling scams and suggested simple changes to Ukrainian legislation that could improve its effectiveness in prosecuting similar crimes.

¶4. Workshop participants further considered how Ukrainian legislation should be amended to fully implement Ukraine's obligations to criminalize nuclear terrorism that arise from UN Security Council Resolutions (UNSCR) and international conventions. During the workshop, held at the George Kuzmycz training center in Kyiv, UNODC experts noted that, in addition to the relevant UNSCRs (1267, 1373, 1452, 1526, 1540), there are 16 international conventions with provisions that should be incorporated. (Note: The 16 conventions include the 2005 Nuclear Terrorism Convention, the

1980 Convention on the Physical Protection of Nuclear Material (and the 2005 Amendment), the 1997 Terrorism Bombing Convention, the 1999 International Convention for the Suppression of the Financing of Terrorism, and the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation)

¶15. The UNODC experts noted the importance of harmonizing definitions in Ukrainian legislation with the definitions used in international agreements, but also pointed out the ambiguities that might arise from differences among the agreements. In incorporating amendments, the legislation also should use accurate translations, with one UNODC presenter noting, for example, that using "money" in place of "funds" in conventions on money laundering could potentially result in a narrower interpretation in national legislation than intended in the international agreement. On the second day, workshop participants refined a UNODC-prepared draft legislative amendment.

¶16. The draft amendment adds the definition of bombing crimes, drawn from the 1997 Terrorism Bombing Convention, and offenses related to nuclear facilities and specific clauses dealing with radioactive material, drawn from the 2005 Nuclear Terrorism Convention, to the Ukrainian Criminal Code Chapter IX, "Crimes against public safety." The draft amendment also includes a new article based on provisions of the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which Ukraine has not yet ratified. Thus, the new article was not discussed at the workshop, but included in the amendment for the Ukrainian government's consideration. The same protocol was used as the basis for recommended changes to a chapter of the criminal code dealing with "criminal offenses against the environment."

¶17. After the workshop, we coordinated a briefing for the diplomatic community, extending invitations to 35 diplomatic missions and

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providing an Embassy conference room for the briefing. A dozen diplomats attended, including Austrian Ambassador Wuketich and Russian Political Counselor Yuriy Pasyutin. NSOI and UNODC representatives also met with Ukrainian Ministry of Justice and Foreign Affairs officials to push for implementation of the draft legislative amendment.

¶18. NSOI, DOJ, and UNODC representatives indicated that they were pleased with the results of the conference and plan to use this as a model for similar conferences in other countries.

¶19. Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.

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